

REMARKS/ARGUMENTS

Upon entry of the present amendment, claims 1-19 will remain pending.

The claims have not been amended so that a new Listing of Claims is not presented herein, and the Examiner is referred to the Listing of Claims submitted with the Amendment filed March 31, 2008.

Regarding Applicants' disclosure, it is noted that Applicants' originally filed application, such as in the paragraph beginning at the bottom of page 14, provides disclosure, for Production Method C using formula (4) and formula (5), wherein k_2 can be 0 as well as wherein k_2 is not 0. For example, the first sentence of the paragraph, discloses:

As for the polyglycerin-modified phospholipid of the present invention, the phospholipid derivative of the formula (1) wherein k_2 is 0, and the phospholipid derivative of the formula (1) wherein k_2 is not 0, and a and b are 0 can be easily synthesized by reacting a polyglycerin compound represented by the formula (4) with a phospholipid represented by the formula (5).

Therefore, Applicants' originally filed disclosure includes explicit support for $k_2 = 0$. Accordingly, Applicants' claim 17 includes support for $k_2 = 0$, as will be further discussed with respect to the enablement rejection of claim 17.

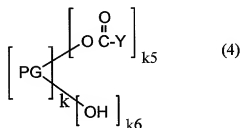
However, Applicants are correcting the specification to remove language pertaining to embodiments with respect to production Method C wherein k_2 is not 0. Thus, by the amendment herein, the specification has been amended to delete an option with respect to production Method C that one having ordinary skill in the art reading Applicants' originally filed application would readily understand is not part of production Method C.

In particular, Applicants note that there are a number of techniques for producing compounds according to Applicants' disclosure, and the method recited in claim 17 is only one method for producing compounds according to the present invention. For example, various methods of producing a phospholipid derivative are disclosed in the specification, such as beginning at the bottom of page 4; the top of page 9; the first paragraph of page 12; and the bottom of page 14.

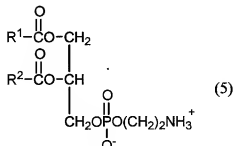
The phospholipid derivatives according to the general formula (1) defined in claim 1 can be obtained by, for example, the production Methods A, B and C as disclosed in Applicants' specification. Method A comprises reacting an activated ester of the phospholipid compound of the general formula (2) with a polyglycerin compound represented by the general formula (3), as recited in claim 14. Method B comprises reacting a phospholipid with carboxylated polyglycerin compound that is obtained by reacting polyglycerin with a dibasic acid compound or halogenated carboxylic acid, as recited in claim 16. Method C comprises reacting a polyglycerin compound represented by the general formula (4) with a phospholipid compound represented by the general formula (5), as recited in claim 17.

As one having ordinary skill in the art reading Applicants' originally filed disclosure would readily understand, Method C prepares phospholipid derivatives wherein k_2 is 0. More specifically, one having ordinary skill in the art would readily understand reading Applicants' originally filed application that the phospholipid derivative only having the moieties of k_1 and k_3 and not having the moiety of k_2 is produced by production Method C, and therefore $k_2 = 0$.

In particular, Method C includes producing the phospholipid derivative which comprises reacting a polyglycerin derivative represented by the following formula (4):



wherein [PG]_k represents a residue of polyglycerin having a polymerization degree of k, wherein k represent a number of 2 to 50, Y represents hydroxyl group or a leaving group, and k₅ and k₆ are numbers satisfying the following conditions: $1 \leq k_5 \leq (k+2)/2$, and $k_5 + k_6 = k + 2$, with a phospholipid represented by the following formula (5):



wherein R¹ and R² have the same meanings as defined above, in an organic solvent in the presence of a basic catalyst.

In the general formula (4) of Method C, the symbol "Y" is defined as hydroxyl group or a leaving group which reacts with a phospholipid represented by the general formula (5) to form a residue, and it is readily apparent that this residue is defined by kl in claim 1.

The group "Y" in the general formula (4) is a highly reactive group, and if the polyglycerin compound represented by the general formula (4) remains unreacted in the final product of the phospholipid derivatives according to the general formula (1), the group "Y" of the polyglycerin compound will undesirably react with other compounds or be hydrolyzed to give impurities in the final product. For this reason, an amount of the phospholipid compound, as disclosed at the top of page 16 used in the step (B) may preferably be 1 to 3 moles, more preferably 1 to 1.3 moles based on the number of k1 for one molecule, and this reduces or eliminates unreacted phospholipid compound in the final product.

Meanwhile, in this reaction, even if the moiety of k5 of the polyglycerin compound of the general formula (4) remains unreacted, this moiety is structurally different from the group of the moiety of k2 in the general formula (1), and accordingly, the moiety of k5 will not form the moiety of k2 according to Method C.

Therefore, Applicants' specification has been amended herein to clarify the disclosure in accordance with the originally disclosed embodiment wherein k2 is 0 beginning at the bottom of page 14.

Reconsideration and allowance of the application are respectfully requested.

Discussion of Telephone Interview with Examiner

Applicants express appreciation for the courtesies extended by the Examiner to Applicants' representative Arnold Turk during a July 28, 2008 telephone interview.

During the interview, the Examiner indicated that the rejections set forth in paragraphs 4 and 8 were not appropriate, and that Applicants could make such indication in the response. In particular, the Examiner indicated that a review of the rejections prior to the telephone interview resulted in the Examiner deciding that the rejections were without appropriate basis and would be withdrawn.

However, the Examiner deemed that the enablement rejection set forth in paragraph 6 is appropriate pointing to the paragraph beginning at the bottom of page 5, second line, which discloses "(except for a compound wherein k2 is 0)". Arguments were presented as to enablement, and the Examiner indicated that the arguments should be presented in writing for consideration.

Claim Of Priority

Applicants note that the Office Action still does not acknowledge Applicants' claim of foreign priority or receipt of the certified copy of the priority application in this national stage application. Applicants therefore once again request that the Examiner acknowledge the claim of foreign priority and confirm receipt of the certified copy of the priority application in the next communication from the Patent and Trademark Office.

Response To Rejection Under 35 U.S.C. 112, Second Paragraph

In response to the rejection of claim 3 under 35 U.S.C. 112, second paragraph, as being indefinite, Applicants submit the following.

As noted above, during the above-discussed telephone interview, the Examiner indicated this ground of rejection is without appropriate basis and the rejection would be withdrawn. Therefore, Applicants request withdrawal of the indefiniteness rejection.

Response To Rejection Under 35 U.S.C. 112, First Paragraph

Claim 17 is rejected under 35 U.S.C. 112, first paragraph, because it is asserted that the specification while being enabling for compounds where k_2 is not "0", does not reasonably provide enablement for compounds of claim 1 wherein $k_2 = 0$. The rejection contends that Applicant clearly states the instant compounds of claim 1 can be made by the process of claim 17 except when $k_2 = 0$. Moreover, during the above-noted telephone interview, the Examiner asserted that the disclosure at page 5 of Applicants' specification includes an exception for $k_2 = 0$.

Applicants direct the Examiner's attention to the remarks presented above with respect to production Method C, wherein it is disclosed beginning at the bottom of page 14 that, with respect to production Method C, as recited in claim 17, that k_2 can be 0. Therefore, the originally filed specification explicitly supports and enables the claimed subject matter.

Accordingly, this ground of rejection is without appropriate basis and should be withdrawn.

Response To Double Patent Rejection

Claim 1-13, 18 and 19 are rejected on the ground of non-statutory obviousness-type double patenting based upon claims in Application No. 10/508,704.

As noted above, during the above-discussed telephone interview, the Examiner indicated this ground of rejection is without appropriate basis and the rejection would be withdrawn. Therefore, Applicants request withdrawal of the obviousness-type double patenting rejection.

CONCLUSION

In view of the foregoing, the Examiner is respectfully requested to reconsider and withdraw the rejections of record, and allow each of the pending claims.

Applicants therefore respectfully request that an early indication of allowance of the application be indicated by the mailing of the Notices of Allowance and Allowability.

Should the Examiner have any questions regarding this application, the Examiner is invited to contact the undersigned at the below-listed telephone number.

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